

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE OF MO EX REL SAINT
LOUIS CHARTER SCHOOL**

APPELLANT,

v.

**STATE BOARD OF EDUCATION,
AND DEPARTMENT OF ELEMENTARY
AND SECONDARY EDUCATION, AND
SPECIAL ADMINISTRATIVE BOARD OF
THE TRANSITIONAL SCHOOL DISTRICT
OF THE CITY OF ST. LOUIS**

RESPONDENTS.

DOCKET NUMBER WD76828

DATE: August 5, 2014

Appeal From:
Cole County Circuit Court
The Honorable Patricia S. Joyce, Judge

Appellate Judges:
Division Three: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Thomas H. Newton,
Judge

Attorneys:
Jeffery Thomas McPherson, St. Louis, MO, for appellant.

James R. Layton, Jefferson City, MO, for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

**MISSOURI COURT OF APPEALS
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APPELLANT,

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SPECIAL ADMINISTRATIVE BOARD
OF THE TRANSITIONAL SCHOOL
DISTRICT OF THE CITY OF ST. LOUIS,**

RESPONDENTS.

No. WD76828

Cole County

Before Division Three: Gary D. Witt, Presiding Judge, Joseph M. Ellis, Judge and Thomas H. Newton, Judge

Appellant St. Louis Charter School ("Charter") appeals from the trial court's grant of summary judgment in favor of the Department of Elementary and Secondary Education ("DESE") and State Board of Education (collectively, the "State"). For the years in question DESE transferred state school aid to the St. Louis School District (the "District") which was statutorily required to pass through a portion of that school aid to Charter. Charter claims that it was underpaid and sued to recover the underpayment from DESE pursuant to 160.415 and to require DESE to recover those funds by withholding future payments of school aid to the District. On appeal, Charter asserts two points of error. In Point One, Charter contends that the trial court erred in granting summary judgment to DESE and in refusing to direct DESE to pay Charter the sums that were underpaid because the court erroneously declared and applied section 160.415.5 to mean that DESE did not have a duty to authorize payment to Charter and in finding that mandamus did not lie to compel any payment that may be due. In Point Two, Charter contends that, in addition, the court further erred in its grant of summary judgment because DESE's administrative decision to deny payment was in excess of its statutory authority. We agree with Charter for reasons stated in Point One; that is, that the trial court erroneously declared and applied the law when it granted summary judgment to the State both in its interpretation of section 160.415.5 and in its resulting misapplication of the law of mandamus.

REVERSED AND REMANDED WITH INSTRUCTIONS

Division Three Holds:

(1) The trial court erred in its grant of summary judgment to the State because the State did not prove it was entitled to judgment as a matter of law in that section 160.415.5 does require DESE to authorize payment to Charter in the event of an underpayment and to subsequently withhold the amount of any such underpayment in equal installments from the next twelve payments made to the District. Moreover, the trial court erroneously concluded that once DESE had calculated the amounts owed to Charter, DESE had completed its duty of "resolving" the dispute.

(2) The trial court erred in finding that mandamus does not lie to compel DESE to perform its statutory duty of paying Charter the amounts of any underpayment and deducting the same from DESE's next twelve payments to the District. By granting summary judgment finding that DESE was not required to do so, the trial court first misinterpreted DESE's statutory duties under section 160.415.5 and also erroneously found that mandamus could not compel any such underpayment.

(3) On remand, the District shall have **thirty** days from the date of our mandate to file, in this case, any objections that it may have as to the accuracy of the amounts of the underpayments as determined by DESE:

FY 2003–2004 = \$693,526.27,
FY 2004–2005 = \$562,710.62,
FY 2005–2006 = \$623,716.13, and
FY 2006–2007 = \$1,501,142.44.

The failure to file an objection to any of the amounts shall waive any future challenge by the District as to any of these amounts.

If an objection is filed by the District, it shall be the obligation of the trial court to first hold a hearing to determine whether the District has waived its right to challenge the amounts of the underpayments for any or all years under the doctrine of laches. If the trial court determines that laches does not apply and the challenge to the amounts is timely, then the trial court shall proceed with an appropriate administrative review of the amounts of the underpayments as determined by DESE and make a final determination as to the amount that was underpaid, if any, for each fiscal year in question. If the trial court determines that laches does apply and the District's challenge is thereby barred, the amounts of underpayments as determined by DESE shall be deemed final.

The trial court shall finally determine the amounts of any underpayments for each of the fiscal years in question under the procedures set forth above. The trial court shall then issue a writ of mandamus ordering DESE to perform its statutory obligations pursuant to section 160.415.5; that is, DESE shall pay Charter the total amount of all of the underpayments together with statutory interest, in twelve equal monthly installments and simultaneously reduce the monthly state aid payments to the District in the same amounts. The payments to Charter shall begin with the first state aid payment that DESE disburses to the District following the final judgment in this matter.

Opinion by Gary D. Witt, Judge

August 5, 2014

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